

ESTTA Tracking number: **ESTTA77649**

Filing date: **04/24/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Poulsen Roser A/S
Granted to Date of previous extension	04/23/2006
Address	Kratbjerg 332 Fredensborg, 3480 DENMARK
Attorney information	Louis K. Ebling Greenebaum Doll & McDonald PLLC 2800 Chemed Center 255 East Fifth Street Cincinnati, OH 45202-4728 UNITED STATES lke@gdm.com Phone:513 455 7644

Applicant Information

Application No	78540037	Publication date	10/25/2005
Opposition Filing Date	04/24/2006	Opposition Period Ends	04/23/2006
Applicant	Piet Schreurs Holding B.V. Hoofdweg 81 1424 PD De Kwakel, NETHERLANDS		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: Cut flowers, flower bulbs, flower seeds, live flowers, roses

Attachments	VICTORY! 78540037 Notice of Opposition.pdf (5 pages)(152815 bytes)
Signature	/Louis Ebling/
Name	Louis K. Ebling
Date	04/24/2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Poulsen Roser A/S	:	
	:	
Opposer,	:	Opposition No.: _____
	:	
v.	:	Mark: VICTORY!
	:	
Piet Schurs Holding B.V.	:	
	:	Serial No.: 78/540,037
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Poulsen Roser A/S, a corporation organized and existing under the law of Denmark, believes it will be damaged by registration in Class 31 of the mark VICTORY! in Application Serial No. 78/540,037, and hereby opposes registration of the same by Piet Schurs Holding B.V. ("Applicant").

As grounds of opposition, it is alleged that:

1. Applicant applied for registration of the mark VICTORY! on the Principal Register in International Class 31 under Section 1(b) of the Lanham Act on December 30, 2004. The description of goods in the application is "cut flowers, flower bulbs, flower seeds, live flowers, roses," in International Class 31. This application was assigned Serial No. 78/540,037 and was published for opposition on October 25, 2005 in the Official Gazette of the United States Patent and Trademark Office.

2. Opposer (and its predecessors-in-interest) is an internationally renowned rose breeder established in 1878 and presently owned and managed by the founder's great-granddaughter, Pernille Olesen, and her husband. Worldwide, every fifth garden rose is a Poulsen rose, and of six million pot roses produced worldwide monthly, four million originate with Opposer. Opposer has been awarded numerous rose breeding medals and awards.

3. Opposer has continuously sold a brand of live roses under the mark VICTORY ("Opposer's Mark") for well over a decade, and continues such sales to the present, and is the owner of the mark VICTORY as used with such goods. Opposer's VICTORY roses were awarded a Gold Medal 1989 at the Odense Flower Festival in Denmark, 1st place in 1992 at Aalsmeer in Holland, and two 1st place awards in 1992 at the Floriade Flower Festival in Holland.

4. Opposer has sold live roses under Opposer's Mark throughout the United States.

5. Opposer requested and was granted extensions of the deadline to file an opposition by the U.S. Patent and Trademark Office Trademark Trial and Appeal Board ("TTAB"), which extended the opposition deadline through April 23, 2006.

6. Opposer's Mark has become highly distinctive of the goods sold under the mark. The distinctiveness of Opposer's Mark would be lost if Applicant's mark is allowed to register.

7. Priority is not an issue. Opposer and its predecessors in interest have used Opposer's Mark continuously since long prior to Applicant's application filing date herein, and Opposer is currently using Opposer's Mark in the U.S.

8. Applicant's mark VICTORY! is identical in sound, appearance and commercial impression to Opposer's Mark.

9. The goods identified in Application No. 78/540,037 are identical to those sold under Opposer's Mark.

10. Opposer is being damaged by pending Application No. 78/540,037, and will be damaged by registration of said application because the mark VICTORY! is so similar to Opposer's VICTORY mark that use and registration will tend to cause confusion or mistake, or will deceive purchasers into the erroneous belief that Applicant's goods are the goods of Opposer, or that such goods are authorized and/or sponsored by or are otherwise connected with Opposer, and thus, such use and registration will appropriate to Applicant substantial aspects of the goodwill Opposer has established in Opposer's Mark.

11. The mark VICTORY! in Application No. 78/540,037 so resembles Opposer's Mark previously used by Opposer in commerce as to be likely, when applied to the goods of Applicant, to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

12. Opposer has no control over the nature and quality of Applicant's goods under the mark Applicant seeks to register, and any dissatisfaction with Applicant's goods by the affected public would reflect adversely on Opposer, thus damaging Opposer's valuable and established goodwill and reputation.

13. The registration of the mark VICTORY! will impair Opposer's trademark rights. If Applicant is permitted to register VICTORY!, such registration will eventually result in the inability of Opposer's Mark to function as an indication of origin.

14. Registration of the mark VICTORY! would create statutory rights under the Trademark Act of 1946 in favor of Applicant, and would tend to restrict, interfere with, and

damage Opposer in the unhampered conduct of its business and protection of its legitimate interests.

15. Opposer previously sought registration of Opposer's Mark for "live roses" on the Principal Register in an application filed September 19, 2000, under Application No. 76/130,886. Registration was refused under Sections 1, 2 and 45 of the Trademark Act, alleging Opposer's Mark was a varietal name for the goods. The U.S. Patent and Trademark Office Trademark Trial and Appeal Board ("TTAB") affirmed the final refusal of registration following Opposer's ex parte appeal, and Opposer's Application No. 76/130,886 was declared abandoned May 21, 2003.

16. In the alternative, Opposer alleges that registration of VICTORY! By Applicant must be refused because the proposed mark is a varietal name for the identified goods. Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127. Varietal (or cultivar) names are generic designations and cannot be registered as trademarks.

17. Please charge the filing fee of \$300 and any additional fees to Greenebaum Doll & McDonald PLLC's Deposit Account, No. 50-2904, the account of Opposer's counsel noted below.

Please direct all correspondence to Louis K. Ebling, Esq., at Greenebaum Doll & McDonald PLLC, 2800 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202-4728, and all calls to the same at (513) 455-7644.

Respectfully submitted,



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